Supreme Court, U.S.
FILED
MAR 7 1997
CLERK

(9)

No. 96-5955

In the Supreme Court of the United States

OCTOBER TERM, 1996

STEINEY J. RICHARDS, PETITIONER

v.

STATE OF WISCONSIN

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

WALTER DELLINGER
Acting Solicitor General
MARK M RICHARD
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
JAMES A. FELDMAN
Assistant to the Solicitor General
DEBORAH WATSON
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

38 pp

QUESTION PRESENTED

Whether it is reasonable for police officers who have a warrant to search a dwelling for evidence of drug trafficking to enter the dwelling to execute the warrant without a prior announcement of their presence and purpose.

TABLE OF CONTENTS

	Page
Interest of the United States	1
Statement	1
Summary of Argument	6
Argument:	
The immediate entry of petitioner's motel room to execute a valid narcotics search warrant was reasonable	8
A. Although the common law rule of announcement is an aspect of the Fourth Amendment's reasonableness requirement, an unannounced entry may be valid if it is supported by sufficient justification	8
B. Protecting the safety of police officers and preventing the destruction of evidence are sufficient justifications for an unannounced entry	10
C. Officer safety generally provides a basis for an unannounced entry in drug trafficking cases	12
D. Preservation of evidence generally provides a basis for an unannounced entry in drug trafficking cases	18
E. Petitioner's objections to immediate no-knock entries in narcotics cases are without merit	24
F. The entry in this case complied with the Fourth Amendment	28
Conclusion	29

TABLE OF AUTHORITIES

Cases:	Page
Bodine v. *Warwick*, 72 F.3d 393 (3d Cir. 1995)	22
Chimel v. *California*, 395 U.S. 752 (1969)	13, 19
Commonwealth v. *Rodriguez*, 614 N.E.2d 649 (Mass. 1993)	14
Dalia v. *United States*, 441 U.S. 238 (1979)	25
Harmelin v. *Michigan*, 501 U.S. 957 (1991)	15
Hill v. *California*, 401 U.S. 797 (1971)	27
Hummel-Jones v. *Strope*, 25 F.3d 647 (8th Cir. 1994)	25
Illinois v. *Rodriguez*, 497 U.S. 177 (1990)	18, 27
Ker v. *California*, 374 U.S. 23 (1963)	18, 19
Maryland v. *Buie*, 494 U.S. 325 (1990)	11, 12, 26
Maryland v. *Wilson*, No. 95-1268 (Feb. 19, 1997)	12
Michigan v. *Long*, 463 U.S. 1032 (1983)	12
Michigan v. *Summers*, 452 U.S. 692 (1981)	12, 15, 26
Miller v. *United States*, 357 U.S. 301 (1958)	8, 9, 29
Mincey v. *Arizona*, 437 U.S. 385 (1978)	26
Murray v. *United States*, 487 U.S. 533 (1988)	29
National Treasury Employees Union v. *Von Raab*, 489 U.S. 656 (1989)	15
New York v. *Belton*, 453 U.S. 454 (1981)	25
New York v. *Harris*, 495 U.S. 14 (1990)	29
Nix v. *Williams*, 467 U.S. 431 (1984)	29
Payton v. *New York*, 445 U.S. 573 (1980)	21, 28
Pennsylvania v. *Mimms*, 434 U.S. 106 (1977)	13
Read v. *Case*, 4 Conn. 166 (1822)	16
Sabbath v. *United States*, 391 U.S. 585 (1968)	9, 17, 29
Segura v. *United States*, 468 U.S. 796 (1984)	23, 29
State v. *Stalbert*, 783 P.2d 1005 (Or. Ct. App. 1989)	14
State v. *Stevens*, 511 N.W.2d 591 (Wis. 1994), cert. denied, 115 S. Ct. 2245 (1995)	5, 14
Steagald v. *United States*, 451 U.S. 204 (1981)	28

Cases—Continued: Page

Tennessee v. *Garner*, 471 U.S. 1 (1985) 11, 28
Terry v. *Ohio*, 392 U.S. 1 (1968) 13, 24
United States v. *Allende*, 486 F.2d 1351 (9th Cir. 1973), cert. denied, 416 U.S. 958 (1974) 22
United States v. *Arias*, 923 F.2d 1387 (9th Cir.), cert. denied, 502 U.S. 840, 876 (1991) 22
United States v. *Artieri*, 491 F.2d 440 (2d Cir.), cert. denied, 417 U.S. 949 & 419 U.S. 878 (1974) .. 16
United States v. *Baker*, 907 F.2d 53 (8th Cir. 1990) 20
United States v. *Bauer*, 84 F.3d 1549 (9th Cir.), cert. denied, 117 S. Ct. 267 (1996), Nos. 96-7179, 96-7220, 96-7223, 96-7226, 96-7303 (Feb. 18, 1997) .. 20
United States v. *Birbal*, 62 F.3d 456 (2d Cir. 1995) 20
United States v. *Bonner*, 874 F.2d 822 (D.C. Cir. 1989) 13-14, 16, 22
United States v. *Buford*, No. 96-3244, 1997 WL 73662 (8th Cir. Feb. 24, 1997) 19
United States v. *Carr*, 939 F.2d 1442 (10th Cir. 1991) 20
United States v. *Carter*, 999 F.2d 182 (7th Cir. 1993) 21
United States v. *Cordero*, 860 F.2d 1034 (11th Cir. 1988) 21
United States v. *Cruz*, 805 F.2d 1464 (11th Cir. 1986), cert. denied, 481 U.S. 1006 & 482 U.S. 930 (1987) 14
United States v. *Gahagan*, 865 F.2d 1490 (6th Cir.), cert. denied, 492 U.S. 918 (1989) 14
United States v. *Garcia*:
741 F.2d 363 (11th Cir. 1984) 22
983 F.2d 1160 (1st Cir. 1993) 22
United States v. *Golter*, 880 F.2d 91 (8th Cir. 1989) 14

Cases—Continued: Page

United States v. *Grant*, 545 F.2d 1309 (2d Cir. 1976), cert. denied, 429 U.S. 1103 (1977) 14
United States v. *Hale*, 977 F.2d 455 (8th Cir. 1992) 20
United States v. *Hromada*, 49 F.3d 685 (11th Cir. 1995) 14
United States v. *Hudson*, 100 F.3d 1409 (9th Cir. 1996) 16
United States v. *Jackson*:
585 F.2d 653 (4th Cir. 1978) 23
990 F.2d 251 (6th Cir. 1993) 20
United States v. *Johnson*, 12 F.3d 827 (8th Cir.), cert. denied, 511 U.S. 1095 (1994) 20
United States v. *Kane*, 637 F.2d 974 (3d Cir. 1981) 16
United States v. *Keene*, 915 F.2d 1164 (8th Cir. 1990), cert. denied, 498 U.S. 1102 (1991) 22-23
United States v. *Kennedy*, 32 F.3d 876 (4th Cir. 1994), cert. denied, 115 S. Ct. 939 (1995) 15, 16, 22
United States v. *Kenyon*, 7 F.3d 783 (8th Cir. 1993) 20
United States v. *King*, 36 F.3d 728 (8th Cir. 1994), cert. denied, 115 S. Ct. 954 (1995) 19
United States v. *Kirk*, No. 94-50472, 1997 WL 40602 (5th Cir. Feb. 3, 1997) 14
United States v. *Lindsey*, 47 F.3d 440 (D.C. Cir.), vacated, 116 S. Ct. 665 (1995) 19
United States v. *Lucien*, 61 F.3d 366 (5th Cir. 1995) 20
United States v. *Markling*, 7 F.3d 1309 (7th Cir. 1993) 22
United States v. *McMillon*, 14 F.3d 948 (4th Cir. 1994) 20
United States v. *Medlin*, 842 F.2d 1194 (10th Cir. 1988) 25

Cases—Continued: Page

United States v. *Melendez*, 60 F.3d 41 (2d Cir.), cert. denied, 116 S. Ct. 258, 429 (1995), cert. granted and judgment vacated, 116 S. Ct. 900 (1996) 19
United States v. *Mitchell*, 64 F.3d 1105 (7th Cir. 1995), cert. denied, 116 S. Ct. 1549 (1996) 19
United States v. *Nabors*, 901 F.2d 1351 (6th Cir.), cert. denied, 498 U.S. 871 (1990) 16, 23
United States v. *Nolan*, 718 F.2d 589 (3d Cir. 1993) 23
United States v. *Payne*, 805 F.2d 1062 (D.C. Cir. 1986) 14
United States v. *Place*, 462 U.S. 696 (1983) 11
United States v. *Roberts*, 913 F.2d 211 (5th Cir. 1990), cert. denied, 500 U.S. 955 (1991)..... 20
United States v. *Robinson*, 414 U.S. 218 (1973) ... 13
United States v. *Rosa*, 11 F.3d 315 (2d Cir. 1993), cert. denied, 511 U.S. 1042 & 114 S. Ct. 1864 (1994) 20
United States v. *Simms*, 18 F.3d 588 (8th Cir. 1994) 19
United States v. *Singer*, 943 F.2d 758 (7th Cir. 1991) 14
United States v. *Smith*, 887 F.2d 104 (6th Cir. 1989) 21
United States v. *Spinelli*, 848 F.2d 26 (2d Cir. 1988) 16
United States v. *Stowe*, 100 F.3d 494 (7th Cir. 1996), petition for cert. pending, No. 96-7439 25
United States v. *Streeter*, 907 F.2d 781 (8th Cir. 1990) 16
United States v. *Tolliver*, 665 F.2d 1005 (11th Cir.), cert. denied, 456 U.S. 935 (1982) 22
United States v. *Tracy*, 835 F.2d 1267 (8th Cir.), cert. denied, 486 U.S. 1014 (1988) 22

Cases—Continued: Page

United States v. *Villamonte-Marquez*, 462 U.S. 579 (1983) 11
United States v. *Whitney*, 633 F.2d 902 (9th Cir. 1980), cert. denied, 450 U.S. 1004 (1981) 16
United States v. *Wiener*, 534 F.2d 15 (2d Cir.), cert. denied, 429 U.S. 820 (1976) 14
Vale v. *Louisiana*, 399 U.S. 30 (1970) 21
Whren v. *United States*, 116 S. Ct. 1769 (1996)..... 16
Wigglesworth v. *Oregon*, 49 F.3d 578 (9th Cir. 1995) 20
Wilson v. *Arkansas*, 115 S. Ct. 1914 (1995) 5, 6, 8, 9, 11, 20, 22, 29
Wong Sun v. *United States*, 371 U.S. 471 (1963) 9
Ybarra v. *Illinois*, 444 U.S. 85 (1979) 21, 26, 27

Constitution and statutes:

U.S. Const. Amend. IV ..... *passim*
18 U.S.C. 3109 ..... 8, 9, 10, 16, 17, 21, 28-29
Wis. Stat. Ann. (West 1989):
§ 139.95(2) 3
§ 161.41(1m) 3

Miscellaneous:

A. Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, H. John Heinz III School of Public Policy and Management, Carnegie Mellon Univ. Working Paper Series (1994) 13
Bureau of Justice Statistics, U.S. Dep't of Justice, *Drugs, Crime, and the Justice System: A National Report* (Dec. 1992) 14
FBI Legal Handbook for Special Agents (1994) 10
Goldstein, *Drugs and Violent Crime, in Pathways to Criminal Violence* (N. Weiner & M. Wolfgang eds. 1989) 15
2 W. LaFave, *Search and Seizure* (3d ed. 1996) 8

Miscellaneous—Continued: Page

Mericli, *The Apprehension of Peril Exception to the Knock and Announce Rule—Part I*, 16 Search & Seizure L. Rep. 129 (July 1989) 13
Restatement (Second) of Torts (1965) 16
Sheley, *Drug Activity and Firearms Possession and Use By Juveniles*, 24 J. Drug Issues 363 (1994) 13

In the Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-5955

STEINEY J. RICHARDS, PETITIONER

v.

STATE OF WISCONSIN

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE UNITED STATES

This case presents the question whether it is reasonable for the police to enter a dwelling without a prior announcement of their presence and purpose when executing a valid search warrant for evidence of drug trafficking. Because the Court's analysis and resolution of that question is likely to affect the admissibility of evidence offered in federal criminal prosecutions, the United States has an interest in this case.

STATEMENT

1. During the week of December 22, 1991, an informant advised Detective Richard Pharo of the Madison, Wisconsin, Police Department that at least four black males from the Detroit area were trafficking in drugs at the "Motel 6" in Madison, where they were registered as guests. J.A. 3-5. Investigating that lead, Detective Pharo found that four black males were at the motel and that they had frequently

refused maid service, had paid in cash for the rooms, and had made and received numerous telephone calls. J.A. 5.

Detective Pharo learned that one of the four men had registered under petitioner's name and had given his address as 11415 Sorrello, Detroit, Michigan. J.A. 6. He also learned that petitioner had been previously arrested while in possession of 63 packets of cocaine. *Ibid.* On December 28, the four men checked out of the Motel 6. The same day, petitioner checked into a Ramada Inn under his own name, paying in cash for the room through January 4, 1992. J.A. 7.

Based on the above information, the Madison Police obtained a warrant to search Room 138 of the Ramada Inn for evidence of drug trafficking. J.A. 8-10. The state court judge issuing the warrant, however, declined to authorize an unannounced entry. J.A. 9, 42.

The police executed the warrant at 3:40 a.m. on December 31, 1991. J.A. 18, 25, 37-38. Detective Pharo, wearing a Ramada Inn shirt, attempted to gain entry to Room 138 by ruse. J.A. 27. Three police officers, one of whom was in uniform, stood to the right of Detective Pharo; two officers in plain clothes stood to his left. Three other officers stationed themselves in a room directly across the hall from Room 138. J.A. 39.

Detective Pharo knocked on the door of Room 138 and, when someone inside the room asked who it was, stated that he was a maintenance man. J.A. 27, 39-40, 42. Petitioner opened the door about one and one-half inches, looked at Detective Pharo, and then looked over Pharo's shoulder towards the police officer in full uniform who was standing three to four feet to the right of Pharo; petitioner's face registered surprise. J.A. 38, 41. Petitioner slammed the door. J.A. 39. Detective Pharo, yelling "police officer," grabbed the doorknob and unsuccessfully attempted to swing the door open; as he did so, he heard the door being bolted. J.A. 39, 41, 44. Detective Pharo heard

another officer yell "police officer," and possibly heard someone yell it again after that. J.A. 40, 44. Detective Pharo and another officer kicked the door, but the door did not move. J.A. 39, 44-45. When there was no response from anyone inside the room, Officer Peregoy came from the room across the hall and forced the door open with his shoulder. J.A. 39, 44-45, 66. As the door opened, Detective Pharo heard the sound of glass breaking. J.A. 39.

Officers entered the room just as petitioner was jumping through a closed window into the courtyard of the Ramada Inn. J.A. 19-20. Another individual, Jerel Dates, was present in the room. J.A. 28. The officers found two plastic bags hidden above a ceiling tile in the bathroom. J.A. 20, 30. One bag contained approximately $3,000 cash; the other bag contained two socks inside which were hidden several baggies. Some of the baggies contained large chunks of cocaine base; others contained over 100 zip-loc gem packs containing cocaine base. J.A. 11-12, 20-21. Officers also found a box of sandwich baggies on a nightstand between the two beds, and papers containing names, telephone numbers, and numeric notations, which appeared to be drug balance sheets. J.A. 11, 22, 31.

2. An information was brought against petitioner by the State of Wisconsin, charging him with possession of cocaine base with intent to deliver it, in violation of Wis. Stat. Ann. § 161.41(1m) (West 1989); and with a violation of Wisconsin's tax stamp statute. Wis. Stat. Ann. § 139.95(2) (West 1989). J.A. 13-17. Petitioner moved to suppress the evidence seized from his hotel room on the ground, *inter alia*, that the officers executing the warrant failed to identify themselves and their purpose before entering and failed to allow him time to open the door. J.A. 35-36.

At the preliminary hearing and, later, at the hearing conducted on the motion to suppress, the officers executing the warrant testified to the facts described above. J.A. 18-32, 37-45, 64-69. Petitioner disputed the officers' testi-

mony. He testified that in the early morning hours of December 31, 1991, someone knocked at the door of his motel room and, in response to petitioner's inquiry, identified himself as the maintenance man. J.A. 45-46. Petitioner claimed that as he opened the door, Detective Pharo, who was wearing a Ramada Inn shirt, hit the door, trying to push it in. In response, petitioner said he slammed the door shut. J.A. 46. Petitioner further testified that when he looked out the door, he had not seen any uniformed police officers. J.A. 47. Petitioner denied that the police had announced their identity and purpose before entering the room; according to him, the officers announced their identity only after entering the room, by which time he was jumping out the window. J.A. 47-48.

The trial court denied the motion to suppress. J.A. 55-56. The court credited the testimony of the officers and discredited the testimony of petitioner, finding it to be self-serving and lacking in credibility. In particular, the court found that the officers had announced their presence before entry. J.A. 54-55. The court further found that, although the officers' announcement of their presence and the forced entry were "close to each other," the officers had allowed petitioner some opportunity to open the door before entering the room. J.A. 55. The court observed that, given the easy disposability of controlled substances, the officers were not required "to stand around in the hall forever." *Ibid.*

The court also inferred from the evidence that petitioner knew full well that it was the police seeking entry into the room. The court explained that petitioner's action in "bail[ing] out the window while all of this is going on would lead someone of a suspicious nature to believe that maybe he did not want Detective Pharo, the maintenance man, to come in because he was aware that accompanying Detective Pharo, even if he was the maintenance man, was a uniformed police officer." J.A. 54.

Following the denial of his motion to suppress, petitioner pleaded no contest to the charges against him. He was sentenced to 13 years' imprisonment on the drug count and to three years on the tax count. J.A. 70-71.

3. The Court of Appeals of Wisconsin affirmed. J.A. 73-75. It relied on *State* v. *Stevens*, 511 N.W.2d 591 (Wis. 1994), cert. denied, 115 S. Ct. 2245 (1995), in which the Wisconsin Supreme Court held that police officers executing a search warrant may always dispense with a knock and prior announcement of their presence when the warrant allows them to search for evidence of felony drug offenses.

4. The Wisconsin Supreme Court affirmed the trial court's denial of petitioner's motion to suppress, concluding that the rule it announced in *Stevens* remained valid under this Court's decision in *Wilson* v. *Arkansas*, 115 S. Ct. 1914 (1995). J.A. 76-97.[1] The court explained that police may dispense with a prior announcement when they have "exigent circumstances," which it stated include a reasonable belief that announcement of the police presence would endanger the officers or result in the destruction of evidence. J.A. 81. The court concluded that those two factors are present in every case in which police officers execute a warrant to search for evidence of felony drug distribution violations. J.A. 81-82. According to the court, "[t]he very facts supporting probable cause to believe that drugs and drug dealers are present in a dwelling also lead to the reasonable belief that exigent circumstances exist." J.A. 84.

The Wisconsin Supreme Court noted that this Court in *Wilson* had expressly acknowledged that the Fourth

---

[1] Although the trial court had found that the police announced their presence before entering, the Wisconsin Supreme Court stated without further comment that the police officers "did not knock and announce prior to their entry." J.A. 78. We analyze the case on the same basis as did the Wisconsin Supreme Court.

Amendment announcement principle must yield to "countervailing law enforcement interests," 115 S. Ct. at 1918-1919, including the need to protect the officers' safety and to prevent the destruction of evidence. J.A. 85-86. The court found no evidence that this Court in *Wilson* intended to forbid a blanket recognition of those interests in a category of cases. J.A. 85.

Justice Abrahamson concurred in the judgment. J.A. 97-109. She found sufficient facts in this case to justify an unannounced and forced entry, but argued that the court erred in reaffirming a blanket rule allowing police to dispense with the announcement requirement in all felony drug cases. J.A. 99-109.

SUMMARY OF ARGUMENT

This Court's decision in *Wilson* v. *Arkansas*, 115 S. Ct. 1914 (1995), established that it may be unreasonable under the Fourth Amendment for officers executing a search warrant not to knock and announce their purpose and authority before entering a dwelling. The Court's decision in *Wilson* also established that officers may dispense with a pre-entry knock and announcement when an immediate entry is justified by the need (among other things) to protect officer safety or to prevent the destruction of evidence. Based on its understanding of those principles, the Supreme Court of Wisconsin held that the execution of a search warrant for evidence of drug trafficking *always* presents a sufficient risk of violence or destruction of evidence to justify immediate entry without a knock or announcement. Petitioner asserts, in contrast, that the reasonableness of an immediate entry turns on whether the executing officers have particularized knowledge that the individuals in the dwelling pose a specific risk of violence or destruction of evidence.

In our view, neither of those two approaches is correct. We submit that a police officer is ordinarily justified in

believing, based on the fact that he has a warrant to search for evidence of drug trafficking, that advance notice to the occupants of the dwelling would create a significant risk of violence or destruction of evidence. The reasonableness of that belief is based on the experience of the police and courts in a myriad of drug trafficking cases, in which the close association between powerful firearms and violence, on the one hand, and drug trafficking, on the other, has been exhaustively detailed. It is also based on the equally consistent experience of the police and courts with drug traffickers, who can be expected to attempt to get rid of their easily disposable wares if given a short grace period before the police enter with a search warrant. Accordingly, because execution of a drug trafficking search warrant carries a significant risk of violence and potential for destruction of evidence, it is ordinarily reasonable for police officers to dispense with a pre-entry knock and announcement. Where, however, police officers know sufficient facts to make the ordinary inferences of dangerousness and destruction of evidence *un*reasonable in a given case, they may not rely on those risks to justify an unannounced entry.

Petitioner suggests that officers must have case-specific information about a particular risk of violence or likely destruction of evidence before they may make an unannounced entry. That suggestion vastly overstates the degree of certainty needed to justify police action under the Fourth Amendment's general requirement of reasonableness. In most cases, the executing agent's knowledge that the case involves a search for evidence of drug trafficking itself justifies a case-specific belief that an announcement before entry will create a risk of danger or destruction of evidence. No more is necessary to satisfy the requirement of reasonableness that governs the Fourth Amendment inquiry. The heightened showing of specificity proposed by petitioner not only is unrealistic,

but it would deprive officers of the benefit of inferences drawn from a vast body of experience with the risks in executing drug trafficking search warrants.

In this case, the police officers had ample reason to infer a significant risk of violence or destruction of evidence if they provided a grace period to petitioner before entry into his motel room. There is nothing in the record in this case to suggest that those inferences were incorrect or to make them unreasonable under the circumstances of this case. Accordingly, entry into petitioner's motel room without a prior knock and announcement was reasonable under the Fourth Amendment.

ARGUMENT

THE IMMEDIATE ENTRY OF PETITIONER'S MOTEL ROOM TO EXECUTE A VALID NARCOTICS SEARCH WARRANT WAS REASONABLE

A. Although The Common Law Rule Of Announcement Is An Aspect Of The Fourth Amendment's Reasonableness Requirement, An Unannounced Entry May Be Valid If It Is Supported By Sufficient Justification

The common law generally required that officers, before entering a person's dwelling, knock on the door and announce their identity and purpose. *Wilson* v. *Arkansas*, 115 S. Ct. 1914, 1916-1918 (1995); *Miller* v. *United States*, 357 U.S. 301, 313 (1958). The common law also required that officers not enter a home forcibly until their request to enter had been actually or constructively refused. 2 W. LaFave, *Search and Seizure* § 4.8(c), at 606-610 (3d ed. 1996); *Miller*, 357 U.S. at 308. Most States have enacted variants of the common law rule. See *Wilson*, 115 S. Ct. at 1917; *Miller*, 357 U.S. at 308. Congress has also embodied that rule in the federal knock-and-announce statute, enacted in 1917 and codified today at 18 U.S.C. 3109. That statute permits a federal officer to enter a home forcibly if,

after giving "notice of his authority and purpose," he is "refused admittance."[2]

In *Wilson* v. *Arkansas*, this Court held that the common law knock-and-announce principle forms "an element of the reasonableness inquiry under the Fourth Amendment" and that "in some circumstances an officer's unannounced entry into a home might be unreasonable under the Fourth Amendment." 115 S. Ct. at 1918. At the same time, the Court emphasized that the Fourth Amendment's "flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." *Ibid.* Although the Court declined to "attempt a comprehensive catalog," *id.* at 1919, of all of the factors that could outweigh "the presumption in favor of announcement," *id.* at 1918, the Court noted, by way of example, that an unannounced entry may be justified "under circumstances presenting a threat of physical violence"; "where a prisoner escapes * * * and retreats to his dwelling"; and "where police officers have reason to believe that evidence would likely be destroyed if advance notice were given." *Id.* at 1918-1919.

---

[2] Section 3109 provides: "The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant." Although the statute refers only to search warrants, its criteria apply as well to the execution of arrest warrants. *Sabbath* v. *United States*, 391 U.S. 585, 588-589 (1968); *Miller*, 357 U.S. at 306; *Wong Sun* v. *United States*, 371 U.S. 471, 482-484 (1963).

B. Protecting The Safety Of Police Officers And Preventing The Destruction Of Evidence Are Sufficient Justifications For An Unannounced Entry

1. There is no serious dispute between the parties in this case that there are circumstances in which the first and the third of the justifications mentioned by the Court in *Wilson*—protecting against violence and preventing the destruction of evidence—make it reasonable for police officers to enter a dwelling without a pre-entry knock or announcement.[3]

Petitioner does not dispute that the need to protect officer safety and to preserve evidence can provide justifications for dispensing with a pre-entry knock or announcement, as this Court stated in *Wilson*. To the contrary, petitioner concedes that where officers can "point to specific and articulable facts which justify their entering without announcement under any of the recognized exceptions to knock-and-announce," they may constitutionally make an unannounced entry. Pet. Br. 44-45.

---

[3] The issue in this case concerns the circumstances in which the police may dispense with a *pre-entry* knock, announcement, and brief pause while the occupants of the dwelling are given the opportunity to open the door. Even in cases in which police may enter immediately, it may be reasonable for them to announce their identity and purpose simultaneously with entry. Federal agents, for example, virtually always announce their presence when executing a search warrant by demanding entry with language such as "FBI—we have a warrant to search your apartment—open the door." Even when officers do not believe that they can afford to delay the entry, an announcement simultaneous with entry alerts the occupants to the presence of federal officials, and thereby reduces the risk that the agents will be mistaken for intruders. The FBI's policy in applying Section 3109, however, states that "[w]here the Agent executing the warrant reasonably believes that by the announcement he/she will place himself/herself or other persons within [the] premises in imminent peril of bodily harm," entry may be accomplished without announcement. See *FBI Legal Handbook for Special Agents* §§ 5-2.2.2, 5-2.2.3(1) (1994).

The substance of petitioner's argument is that this determination must be made on a case-by-case basis. See also ACLU, et al., Amicus Br. 21-29.

The Supreme Court of Wisconsin similarly recognized that "an extremely high risk of serious if not deadly injury to the police as well as the potential for the disposal of drugs by the occupants" may justify an entry without a prior knock and announcement. J.A. 76-77. The court disagreed with petitioner's view, however, that those factors must be evaluated with a high degree of specificity in each case. The court instead held that those "exigent circumstances are always present in the execution of search warrants involving felonious drug delivery," J.A. 76, and that a blanket exception to the knock-and-announce rule in such cases was therefore warranted.

2. Because the question whether officers executing a warrant may dispense with a prior knock and announcement is "an element of the reasonableness inquiry under the Fourth Amendment," *Wilson*, 115 S. Ct. at 1918, it must be resolved by balancing "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." *Tennessee* v. *Garner*, 471 U.S. 1, 8 (1985) (quoting *United States* v. *Place*, 462 U.S. 696, 703 (1983)); *Maryland* v. *Buie*, 494 U.S. 325, 331 (1990); *United States* v. *Villamonte-Marquez*, 462 U.S. 579, 588 (1983). The result of that balancing, in our view, is a rejection of both the Wisconsin Supreme Court's determination that law enforcement interests are "always" paramount in this situation and petitioner's position that the evidence must be assessed in each case to determine whether the officers executing the warrant had knowledge particular to that case that would justify dispensing with a pre-entry announcement. Rather, in our view, the possession of a narcotics search warrant is ordinarily sufficient to make it reasonable for officers to enter without a knock and

prior announcement. But there may be cases where that is not so, and in such cases, an unannounced entry would be unreasonable.

C. Officer Safety Generally Provides A Basis For An Unannounced Entry In Drug Trafficking Cases

1. This Court has frequently noted the "weighty interest in officer safety," *Maryland* v. *Wilson*, No. 95-1268 (Feb. 19, 1997), slip op. 4, and has held that that interest is sufficient to render reasonable many police intrusions on Fourth Amendment interests. Even when there is less than absolute assurance that a particular situation would threaten officers' safety, this Court has recognized that the powerful interest in officer security makes it reasonable for officers to take protective actions.

For example, in *Maryland* v. *Wilson*, the Court held that the "legitimate and weighty" interest in officer safety, slip op. 3, was sufficient to justify police officers in requiring passengers to get out of a car that has been stopped for a traffic violation. The Court did not require absolute certainty that there would be a threat to officer safety in each instance; instead, the Court relied on the fact that "traffic stops *may* be dangerous encounters," *id.* at 4 (emphasis added), and that the "danger to an officer from a traffic stop *is likely to be greater* when there are passengers in addition to the driver in the stopped car," *id.* at 6 (emphasis added). The Court has similarly noted in a variety of other contexts that a threat—though not necessarily a certainty—of danger to police officers may justify Fourth Amendment intrusions. See *Buie*, 494 U.S. at 336 ("protective sweep" of house justifiable based on "reasonable suspicion of danger"); *Michigan* v. *Long*, 463 U.S. 1032, 1049 (1983) ("protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger"); *Michigan* v. *Summers*, 452 U.S. 692, 702-703 (1981) ("interest in mini-

mizing the risk of harm to the officers" justifies detaining occupant of premises while search is conducted); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (relying on the "inordinate risk confronting an officer" to justify requirement that driver exit car in a traffic stop); *United States* v. *Robinson*, 414 U.S. 218 (1973) (search of arrestee for weapons permissible, regardless of whether there is reason to believe arrestee is armed or dangerous); *Chimel* v. *California*, 395 U.S. 752, 763 (1969) (search incident to arrest justified on ground that without search "officer's safety might well be endangered"). As the Court stated in *Terry* v. *Ohio*, 392 U.S. 1, 23 (1968), "[c]ertainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties."

2. An officer who prepares to enter a dwelling of a suspected drug trafficker to execute a search warrant faces an unusually acute risk of violence. There is a significant possibility that persons inside will be armed and that the premises will have been fortified in anticipation of a police raid. See Mericli, *The Apprehension of Peril Exception to the Knock and Announce Rule—Part I*, 16 Search & Seizure L. Rep. 129, 129-130 (July 1989).[4] Indeed, the courts have frequently recognized that there is a well-established association between guns and drugs; firearms are "tools of the [narcotics] trade." *United States* v.

---

[4] See also, *e.g.*, A. Blumstein, *Youth Violence, Guns, and the Illicit-Drug Industry*, H. John Heinz III School of Public Policy and Management, Carnegie Mellon Univ. Working Paper Series 18 (1994) ("juveniles, as all participants in the illicit drug industry, are very likely to carry guns for self-protection, largely because that industry uses guns as an important instrument for dispute resolution"); Sheley, *Drug Activity and Firearms Possession and Use By Juveniles*, 24 J. Drug Issues 363, 373 (1994) (90% of the drug dealers in the surveyed population owned a firearm and 83% of those who had sold drugs had fired a gun at someone).

Bonner, 874 F.2d 822, 824 (D.C. Cir. 1989).[5] And the guns that drug traffickers prefer are often machine guns and other heavy weaponry that pose the greatest danger to police officers and bystanders. See, *e.g.*, *United States* v. *Kirk*, No. 94-50472, 1997 WL 40602, at *9 n.1 (5th Cir. Feb. 3, 1997) (en banc) (opinion of Higginbotham, J.) (citing 29 recent federal appellate cases).

Once an officer has announced his intention to enter a home to execute a search for contraband or to make an arrest, the drug trafficker has a heightened incentive to prevent the officer from attaining those goals. See Bureau of Justice Statistics, U.S. Dep't of Justice, *Drugs, Crime, and the Justice System: A National Report* 5 (Dec. 1992) ("To avoid being arrested and punished for trafficking, drug dealers commit violent crimes against police and threaten informants or witnesses."). Accordingly, "the

---

[5] See also *United States* v. *Hromada*, 49 F.3d 685, 689 & n.8 (11th Cir. 1995) ("Guns and violence go hand-in-hand with illegal drug operations."); *United States* v. *Golter*, 880 F.2d 91, 94 (8th Cir. 1989) (noting the "well recognized nexus between drugs and firearms"); *United States* v. *Gahagan*, 865 F.2d 1490, 1499 (6th Cir.), cert. denied, 492 U.S. 918 (1989); *United States* v. *Cruz*, 805 F.2d 1464, 1474 (11th Cir. 1986) ("[G]uns are a tool of the drug trade. There is a frequent and overpowering connection between the use of firearms and narcotics traffic."), cert. denied, 481 U.S. 1006 & 482 U.S. 930 (1987); *United States* v. *Payne*, 805 F.2d 1062, 1065 (D.C. Cir. 1986) ("[S]ubstantial dealers in narcotics possess firearms and * * * such weapons are as much tools of the trade as more commonly recognized drug paraphernalia."); *United States* v. *Grant*, 545 F.2d 1309, 1313 (2d Cir. 1976) (taking judicial notice that "substantial dealers in narcotics keep firearms on their premises as tools of the trade"), cert. denied, 429 U.S. 1103 (1977); *United States* v. *Wiener*, 534 F.2d 15, 18 (2d Cir.) (noting that large scale drug dealers typically keep firearms at their base of operations as a tool of the trade), cert. denied, 429 U.S. 820 (1976); accord *United States* v. *Singer*, 943 F.2d 758, 762-763 (7th Cir. 1991); *State* v. *Stevens*, 511 N.W.2d 591, 596-597 (Wis. 1994), cert. denied, 115 S. Ct. 2245 (1995); *Commonwealth* v. *Rodriguez*, 614 N.E.2d 649, 651 (Mass. 1993); *State* v. *Stalbert*, 783 P.2d 1005, 1007 (Or. Ct. App. 1989).

law has uniformly recognized that substantial dealers in narcotics possess firearms" and that "entrance into a situs of drug trafficking activity carries all too real dangers to law enforcement officers." *United States* v. *Kennedy*, 32 F.3d 876, 882-883 (4th Cir. 1994) (internal quotation marks omitted; citing cases), cert. denied, 115 S. Ct. 939 (1995).

Because drug dealers are so heavily armed and are so frequently willing to use their weapons to protect their illegal operations, this Court has recognized the risks of executing search warrants in narcotics trafficking cases. As the Court explained in *Michigan* v. *Summers*, 452 U.S. at 702-703 (footnote omitted): "[T]he execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." See also *Harmelin* v. *Michigan*, 501 U.S. 957, 1003 (1991) (Kennedy, J., concurring in part and concurring in judgment) ("Studies * * * demonstrate a direct nexus between illegal drugs and crimes of violence.") (citing Goldstein, *Drugs and Violent Crime, in Pathways to Criminal Violence* 16-48 (N. Weiner & M. Wolfgang eds. 1989)); *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 669 (1989).

3. In light of those risks of violence, a police officer may reasonably take steps, such as dispensing with pre-entry announcement or delay following announcement, to protect himself and lessen the overall risk of violence while executing a search warrant for evidence of drug trafficking. Indeed, giving the occupants a grace period during which they may prepare a violent response to the inevitable entry can increase the overall likelihood of violence and the resulting risk of injury to officers, bystanders, and the occupants themselves. On the other side

of the scale, when the entering officers have a warrant to enter a home, the occupants' privacy interest is necessarily limited to the brief interval between the officers' announcement and their entry. Given the weighty interest in officer safety and the necessarily limited privacy interest of the occupants of the dwelling, the fact that police officers are entering the home of a suspected drug trafficker is thus ordinarily sufficient to warrant a reasonable belief that the officers will face a significant risk of violence, and therefore to justify dispensing with a pre-entry announcement.[6]

Because the Fourth Amendment standard is an objective one, see, *e.g.*, *Whren* v. *United States*, 116 S. Ct. 1769 (1996), the principle that drug traffickers are dangerous (and that they are likely to destroy evidence if given the opportunity, see pp. 18-23, *infra*) holds true whenever the police are executing a drug trafficking search warrant and

---

[6] The lower courts interpreting Section 3109 have generally recognized that it is reasonable to forgo announcement (or to enter simultaneously with announcement) when a reasonable basis exists to believe that advance notice of an entry would place the officers or others in peril. See, *e.g.*, *United States* v. *Hudson*, 100 F.3d 1409, 1417 (9th Cir. 1996); *Kennedy*, 32 F.3d at 882-883 (entry immediately after announcement); *United States* v. *Streeter*, 907 F.2d 781, 788-789 (8th Cir. 1990) (entry five to ten seconds after announcement); *United States* v. *Nabors*, 901 F.2d 1351, 1354 (6th Cir.) (entry immediately after announcement), cert. denied, 498 U.S. 871 (1990); *Bonner*, 874 F.2d at 826 (entry 11-12 seconds after announcement); *United States* v. *Spinelli*, 848 F.2d 26, 30 (2d Cir. 1988) (unannounced entry); *United States* v. *Kane*, 637 F.2d 974, 978-980 (3d Cir. 1981) (unannounced entry); *United States* v. *Whitney*, 633 F.2d 902, 905, 908-911 (9th Cir. 1980) (entry "[w]ithin seconds" of announcement), cert. denied, 450 U.S. 1004 (1981); *United States* v. *Artieri*, 491 F.2d 440, 442, 444 (2d Cir.) (entry three seconds after announcement), cert. denied, 417 U.S. 949 & 419 U.S. 878 (1974); see also Restatement (Second) of Torts § 206 cmt. d, at 387 (1965); *Read* v. *Case*, 4 Conn. 166, 170 (1822) (recognizing a common law "peril to officers" exception).

do not know of facts that negate it. Therefore, no further purpose would be served by requiring officers in each case to show that the likely occupants of the dwelling pose a particularly high risk of violence, a showing that will rarely be available; the fact that the occupants are suspected drug traffickers or their accomplices is ordinarily sufficient to warrant a reasonable officer to fear a significant threat to his safety. Nor would it serve any purpose to require the government to prove that general point in each case; the broad experience of the police and courts in this area is sufficient to support the reasonableness of that generalization.

There may be particular cases, however, in which the police are aware of facts that are sufficient to negate the general principle that entering the home of a drug trafficker poses a significant risk of violence. If there are such facts in a particular case that make it *un*reasonable for an officer to fear a significant risk of violence, then an unannounced entry in that case would not be justifiable on that basis under the Fourth Amendment. If, for example, officers know that the persons suspected of drug trafficking were not present within the building at the time of the entry and they have no other reason to believe that the persons inside presented a risk of danger, an unannounced entry based on a fear of peril would be unreasonable. It would also be unreasonable to make an unannounced entry on grounds of possible peril where the officers had reliable and uncontradicted information (*i.e.*, from an informant) that the persons were unarmed. Compare *Sabbath* v. *United States*, 391 U.S. 585, 591 (1968) (exigency exception to Section 3109 inapplicable where "agents had no basis for assuming petitioner was armed or might resist arrest"). But otherwise, given the common possession of firearms by drug traffickers and the high risk of violence in police encounters with them, law enforcement officers have a reasonable basis for anticipating danger in cases involving

narcotics traffickers, and the Constitution does not prevent the officers from using the element of surprise to minimize that danger.[7]

D. Preservation Of Evidence Generally Provides A Basis For An Unannounced Entry In Drug Trafficking Cases

Analogous principles hold true for destruction of evidence. An officer entering a dwelling to execute a search warrant for evidence of drug trafficking encounters a heightened risk that the target of the search will dispose of the drugs during the time between announcement and entry. Drugs generally take up small volumes in relation to their value, and they are usually easily and quickly disposable through plumbing fixtures, windows, and other means. For that reason, there is an inherent risk that a drug dealer who hears a police knock and announcement will immediately dispose of drugs while police officers are waiting for admittance—or, more likely, refusal of admittance—into the dwelling.

In *Ker* v. *California*, 374 U.S. 23 (1963), a plurality of this Court accepted that the risk of destruction of drugs would justify an unannounced entry. The plurality explained that the unannounced entry into a drug suspect's home was reasonable because the drugs "could be quickly and easily destroyed." *Id.* at 40. The plurality adverted to an officer's testimony that, in his experience, "on 'many, many occasions' * * * '[narcotics suspects] have flushed

---

[7] It would not undercut the reasonableness of the officers' belief to show that, unbeknownst to the officers in a particular case, the occupants of the dwelling were not in fact prepared to use violence. "It goes without saying that in determining the lawfulness of entry * * * we may concern ourselves only with what the officers had reason to believe *at the time of their entry*." *Ker* v. *California*, 374 U.S. 23, 40 n.12 (1963) (plurality opinion); cf. *Illinois* v. *Rodriguez*, 497 U.S. 177, 186 (1990).

narcotics down toilets, pushed them down drains and sinks and [used] many other methods of getting rid of them prior to my entrance.'" *Id.* at 28 n.3.[8]

The likelihood noted by the *Ker* plurality that a suspect will attempt hurriedly to dispose of narcotics evidence on learning that police are about to enter his dwelling is by now established beyond serious question.[9] That tendency

---

[8] In *Chimel* v. *California*, similar principles underlay the Court's holding that whenever an arrest is undertaken, "it is entirely reasonable for [an] arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." 395 U.S. at 763. The Court did not require a certainty that the evidence would be destroyed in order to justify the search, nor has the Court required proof that the particular arrestee was likely to conceal or destroy evidence. Because the context of an arrest inherently creates a threat that the arrestee will conceal or destroy evidence, a search of the arrestee's person satisfies the Fourth Amendment's "reasonableness" command.

[9] See, *e.g.*, *United States* v. *Buford*, No. 96-3244, 1997 WL 73662, at *1 (8th Cir. Feb. 24, 1997) (officer executing search warrant "saw an arm come through the corner of a window screen and toss a clear plastic 'baggie' onto a truck below"); *United States* v. *Mitchell*, 64 F.3d 1105, 1111 (7th Cir. 1995) (noting defendant's "attempt to throw the briefcase [containing crack cocaine and marijuana] out of the window" before his arrest), cert. denied, 116 S. Ct. 1549 (1996); *United States* v. *Melendez*, 60 F.3d 41, 45 (2d Cir.) (officers stationed outside while arrest warrant executed saw "a loaded machine gun, a box of 'Absolute' heroin, and a drug record" thrown out of the window), cert. denied, 116 S. Ct. 258, 429 (1995), cert. granted and judgment vacated on other grounds, 116 S. Ct. 900 (1996); *United States* v. *Lindsey*, 47 F.3d 440, 443 (D.C. Cir.) (officers "recovered a plastic vial containing crack cocaine from the ground outside the apartment" which police "observed being thrown from the apartment by [defendant]"), vacated on other grounds, 116 S. Ct. 665 (1995); *United States* v. *King*, 36 F.3d 728, 732-733 (8th Cir. 1994) (officers executing search warrant observed defendant "throw[ing] drugs out of the house" and "throwing [a] gun out of the window"), cert. denied, 115 S. Ct. 954 (1995); *United States* v. *Simms*, 18 F.3d 588, 592 (8th Cir. 1994) (defendant saw police and then "threw an opened package containing cocaine base out a window");

is reflected in the numerous decisions that recount suspects flushing or pouring powdery, granular, leafy, and liquid narcotic substances down various indoor plumbing facilities as police enter or prepare to enter.[10] Thus, the

---

United States v. *Rosa*, 11 F.3d 315, 326 (2d Cir. 1993) (officers waiting outside while search warrant was executed "saw plates containing a white powder believed to be heroin being thrown out the window"), cert. denied, 511 U.S. 1042 & 114 S. Ct. 1864 (1994); *United States* v. *Jackson*, 990 F.2d 251, 252 (6th Cir. 1993) (agents executing search warrant "found a bag containing * * * crack cocaine outside an apartment window"); *United States* v. *Hale*, 977 F.2d 455, 456 (8th Cir. 1992) (defendant "threw * * * cocaine and money out the window" when police arrived to execute search warrant).

[10] See, *e.g.*, *Wilson* v. *Arkansas*, 115 S. Ct. at 1916 (defendant found "in the bathroom, flushing marijuana down the toilet"); *United States* v. *Bauer*, 84 F.3d 1549, 1553 (9th Cir.) (when police searched defendant's home, "she was flushing marijuana down the toilet"), cert. denied, 117 S. Ct. 267 (1996), Nos. 96-7179, 96-7220, 96-7223, 96-7226, 96-7303 (Feb. 18, 1997); *United States* v. *Birbal*, 62 F.3d 456, 458 (2d Cir. 1995) (defendant found "flushing cocaine down a toilet as police executed a search warrant in his home"); *United States* v. *Lucien*, 61 F.3d 366, 375 (5th Cir. 1995) (defendant "was flushing [cocaine base] down the toilet when the police arrived"); *Wigglesworth* v. *Oregon*, 49 F.3d 578, 579-580 (9th Cir. 1995) (lab report showed "presence of cocaine in water [defendant] was flushing down a sink drain when she was arrested"); *United States* v. *McMillon*, 14 F.3d 948, 954 (4th Cir. 1994) (police "encountered [defendant] flushing some items down the toilet," which defendant stated "were cocaine"); *United States* v. *Johnson*, 12 F.3d 827, 830 (8th Cir.) (defendant "found flushing crack cocaine and methamphetamine down a toilet" when police arrived to execute search warrant), cert. denied, 511 U.S. 1095 (1994); *United States* v. *Kenyon*, 7 F.3d 783, 784 (8th Cir. 1993) (before officers could enter dwelling to execute search warrant, defendant "disposed of an estimated nine ounces (255 grams) of cocaine by flushing it down a toilet"); *United States* v. *Carr*, 939 F.2d 1442, 1447 (10th Cir. 1991) (officer apprehended defendant "in the bathroom pouring a bottle of PCP into the toilet"); *United States* v. *Roberts*, 913 F.2d 211, 219 (5th Cir. 1990) (officer "recovered numerous small baggies of cocaine found flushing in the toilet" of dealer's dwelling), cert. denied, 500 U.S. 955 (1991); *United States* v. *Baker*, 907 F.2d 53, 54 (8th Cir. 1990) (officer executing

actual experience in narcotics cases confirms what common sense would suggest: "[I]t is a common practice for drug dealers to attempt to destroy the drug evidence when they are alerted to an imminent police search." *United States* v. *Carter*, 999 F.2d 182, 186 n.5 (7th Cir. 1993).

Based on the significant risk that a drug dealer who has a few moments of grace before a police entry will employ them to destroy evidence, the vast majority of courts of appeals have held that such a risk is an "exigent circumstance" sufficient to justify full or substantial noncompliance with Section 3109.[11] That has been so not only in the

---

warrant "saw [defendant] coming out of a bathroom and heard a toilet flushing," then retrieved a "brick of cocaine from the commode"); *United States* v. *Smith*, 887 F.2d 104, 105 (6th Cir. 1989) (officers executing warrant "discovered defendant attempting to flush cocaine down the toilet"); *United States* v. *Cordero*, 860 F.2d 1034, 1036 (11th Cir. 1988) (defendant "admits that, at the time of her arrest, 'she had destroyed a quantity of cocaine by flushing it down a toilet'").

[11] As noted above (see p. 16 n.6, *supra*), most federal courts of appeals have held that "exigent circumstances" may justify dispensing with a prior announcement under either the Fourth Amendment or 18 U.S.C. 3109. The reference to "exigent circumstances," however, can cause confusion. "Exigent circumstances" is the phrase used to describe the justification needed to dispense with a warrant altogether before entering a dwelling. See *Payton* v. *New York*, 445 U.S. 573, 585-586 (1980); *Vale* v. *Louisiana*, 399 U.S. 30, 34-35 (1970). In the context of an unannounced entry, by contrast, the officers have ordinarily obtained a warrant. Thus, a magistrate has already authorized the intrusion into the residence, and, as *Wilson* makes clear, the question is only whether it would be "reasonable" within the meaning of the Fourth Amendment to dispense with the knock-and-announce requirement. See *Ybarra* v. *Illinois*, 444 U.S. 85, 104 (1979) (Rehnquist, J., dissenting) ("[I]n judging the reasonableness of [a] search pursuant to [a] warrant, we need not measure it against jealously drawn exceptions to that requirement."). It stands to reason that an unannounced entry pursuant to a warrant may be "reasonable" under circumstances that would not justify a wholly warrantless entry into a dwelling. Indeed, in *Wilson*, this Court did not use the term "exigent circumstances" and stressed instead that an unannounced entry need only meet a "flexible" reasonableness stan-

limited class of cases in which there is evidence unique to the case either that drugs are likely to be destroyed on an announcement or that such drugs, after an announcement, are in fact being destroyed.[12] Instead, in numerous cases, the courts of appeals have allowed entry without an announcement[13] or entry simultaneous with or seconds after an announcement,[14] even though no evidence of likely de-

---

dard that weighs the relevant "law enforcement interests." 115 S. Ct. at 1918. See *Bodine* v. *Warwick*, 72 F.3d 393, 398 (3d Cir. 1995) (*Wilson* adopts an overall standard of reasonableness that considers exigency as a single factor).

[12] See, *e.g.*, *Bonner*, 874 F.2d at 825-826 (sounds of possible destruction heard); *United States* v. *Allende*, 486 F.2d 1351, 1353 (9th Cir. 1973) (sounds of scampering feet heard), cert. denied, 416 U.S. 958 (1974).

[13] See, *e.g.*, *United States* v. *Arias*, 923 F.2d 1387, 1391 (9th Cir.) (unannounced entry based on dual concern that occupants "might be destroying evidence or arming themselves"), cert. denied, 502 U.S. 840, 876 (1991); *United States* v. *Tracy*, 835 F.2d 1267, 1270 (8th Cir.) (unannounced entry based on knowledge of similar drug sites where an announcement "would cause evidence to be destroyed before the officers could surmount the anticipated hindrances to their entry"), cert. denied, 486 U.S. 1014 (1988); *United States* v. *Garcia*, 741 F.2d 363, 366 (11th Cir. 1984) (announcement excused based on belief that suspect would be "able to wash the cocaine down the sink in the kitchen or bathroom"); *United States* v. *Tolliver*, 665 F.2d 1005, 1008 (11th Cir.) (unannounced entry where announcement "would have jeopardized the availability of evidence (the cocaine) which the agents knew to be inside"), cert. denied, 456 U.S. 935 (1982).

[14] See, *e.g.*, *Kennedy*, 32 F.3d at 882 (entry immediately after announcement based on belief that "the experienced drug distributors inside the house would attempt to destroy evidence unless the agents acted quickly"); *United States* v. *Markling*, 7 F.3d 1309, 1318 (7th Cir. 1993) (entry seven seconds after announcement where suspect was believed likely to flush cocaine down toilet); *United States* v. *Garcia*, 983 F.2d 1160, 1168 (1st Cir. 1993) (entry ten seconds after announcement where occupants were "believed to possess cocaine, a substance that is easily and quickly hidden or destroyed"); *United States* v. *Keene*, 915 F.2d 1164, 1168-1169 (8th Cir. 1990) (entry immediately after

struction existed apart from the assumption that the suspects in the home would conform to the tendency of narcotics suspects to destroy such incriminating contraband if they learn of an imminent entry.

Thus, in meeting the government's burden to justify an immediate no-announce entry, it is not necessary for the police to have specific proof that destruction of evidence is likely if entry is delayed. It is unrealistic to presume that such evidence is ordinarily available. The fact that the police officers are searching for drugs that are easily disposable is sufficient to warrant a reasonable belief that the officers will face a significant risk of destruction of evidence if they allow a grace period to the occupants of the dwelling. Where officers have such a reasonable belief, the Fourth Amendment permits dispensing with a pre-entry announcement; restrictions on the manner of execution of a search warrant should not cost the police the very evidence that is the object of the warrant. See, *e.g.*, *Segura* v. *United States*, 468 U.S. 796, 816 (1984) (idea of a "'constitutional right' to destroy evidence * * * defies both logic and common sense").

There may be particular cases, however, in which the police are aware of facts that are sufficient to negate the general risk that the occupants of the dwelling will dispose of easily disposable drugs if advance notice is given before police entry. If there are such facts in a particular

---

announcement based on fact that "persons who traffic in liquid narcotics often attempt to dispose of them, i.e., by pouring them down a sink or floor drain"), cert. denied, 498 U.S. 1102 (1991); *Nabors*, 901 F.2d at 1354 (entry immediately after announcement based on belief that suspect had drugs "which could be easily disposed of"); *United States* v. *Nolan*, 718 F.2d 589, 598 (3d Cir. 1993) (entry simultaneous with announcement based on belief that suspects would flush narcotics down toilet); *United States* v. *Jackson*, 585 F.2d 653, 662 (4th Cir. 1978) (entry simultaneous with announcement where suspects possessed gambling slips "susceptible of easy destruction").

case that are sufficient to make it *un*reasonable for an officer to fear the destruction of evidence, then an unannounced entry in that case would not be justifiable under the Fourth Amendment. If, for example, the officers knew that the only person at home at the time of the search is unconnected with the narcotics enterprise and that the narcotics are packaged (*i.e.*, in crates) so as to render them nondisposable within a brief period of time, then invocation of a destruction-of-evidence justification for an unannounced entry would be unreasonable.

E. Petitioner's Objections To Immediate No-Knock Entries In Narcotics Cases Are Without Merit

Petitioner and his amici curiae (Pet. Br. 38-40; Amici Br. 10-12) argue that Wisconsin's blanket rule does not allow for a case-by-case determination of reasonableness. The standard we propose, however, does so. It begins with the general principle, derived from the experience of courts and police officers in a myriad of drug cases, that an unannounced entry is ordinarily valid to execute a drug trafficking search warrant.[15] Where it applies, the princi-

---

[15] Officers executing a search warrant for evidence of drug trafficking ordinarily have a greater quantum of proof bearing on the danger posed by the occupants of the dwelling than did the officer in *Terry* v. *Ohio*, 392 U.S. 1 (1968)—a case relied on by petitioner (Br. 40) as establishing the kind of particularized suspicion that is necessary to justify a Fourth Amendment intrusion. In *Terry*, this Court upheld a stop of three men and the frisk of one of them based on their having engaged in tactics that strongly suggested they "were contemplating a daylight robbery—which, it is reasonable to assume, would be likely to involve the use of weapons." 392 U.S. at 28. The Court did not require the officer conducting the frisk to point to any further suspicion that that particular suspect actually had a gun, or that he might use it against the officer during the course of the investigative detention. Here, the warrant based on probable cause authorizing the search of petitioner's hotel room for evidence of drug trafficking supplied the

ple we advocate serves the salutary function of "establish[ing] [a] workable rule," *New York* v. *Belton*, 453 U.S. 454, 460 (1981), that, "in most instances, makes it possible to reach a correct determination beforehand as to whether an invasion of privacy is justified in the interest of law enforcement," *id.* at 458. In cases where that principle does not apply—where the police know of facts that negate the inference of personal risk and likely destruction of evidence that accompany the execution of warrants in drug trafficking cases—the officers may not dispense with a pre-entry announcement (unless, of course, other justifications for entering without a prior announcement are applicable on the facts of the given case).

Petitioner also asserts (Br. 38) that permitting the police to dispense with pre-entry announcements in narcotics cases would place absolute, unreviewable discretion in the hands of the executing officers. If it is generally reasonable for the officer to execute a narcotics search warrant without a prior announcement, however, the Fourth Amendment does not invalidate the officer's decision to do so, even if particular officers might choose to execute the warrant in a different manner. As this Court explained in *Dalia* v. *United States*, 441 U.S. 238 (1979), "it is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant—subject of course to the general Fourth Amendment protection 'against unreasonable searches and seizures.'" *Id.* at 257 (footnote omitted). See also *United States* v. *Stowe*, 100 F.3d 494, 499 (7th Cir. 1996), petition for cert. pending, No. 96-7439 (filed Jan. 14, 1997); *Hummel-Jones* v. *Strope*, 25 F.3d 647, 650 (8th Cir. 1994); *United States* v. *Medlin*, 842 F.2d 1194, 1196 (10th Cir. 1988). Police executing a

---

requisite particularized and individualized suspicion that petitioner might be armed and dangerous.

search warrant are in the best position to determine whether an announcement before entry would jeopardize their safety as well as the safety of the occupants and, so long as the officers remain within the bounds of Fourth Amendment "reasonableness," they may choose the means that they believe are most likely to lessen the risk of violence to all concerned. See J.A. 93.[16]

---

[16] Amici ACLU, et al., also rely (Br. 16-18 & n.32, 23-24) on *Maryland* v. *Buie*, 494 U.S. 325 (1990), *Mincey* v. *Arizona*, 437 U.S. 385 (1978), and *Ybarra* v. *Illinois*, 444 U.S. 85 (1989), among others, for the proposition that the presence of a warrant to search for evidence of drug trafficking does not provide officers with the requisite particularized suspicion to justify dispensing with the announcement requirement. Their reliance on those cases is misplaced.

In *Buie*, the Court held that officers executing a warrant to arrest a robbery suspect at his home are entitled to conduct a limited protective sweep only if articulable facts warrant the belief that "the area to be swept harbors an individual posing a danger to those on the arrest scene." 494 U.S. at 334. The Court rejected the State's argument that no level of objective justification should be required because of the dangers inherent in executing an arrest warrant for a violent crime. The Court explained that "the existence of the arrest warrant implies nothing about whether dangerous third parties will be found in the arrestee's house." *Id.* at 335 n.2. The Court explicitly contrasted the situation in *Michigan* v. *Summers*, 452 U.S. 692 (1981), where the presence of a search warrant "implied a judicial determination that police had probable cause to believe that someone in the home was committing a crime." 494 U.S. at 335 n.2. The instant situation is more akin to *Summers* than *Buie*, since the search warrant constituted a judicial determination that evidence of drug trafficking would be found in the dwelling to be searched. Unlike in *Buie*, that fact *does* imply that police officers executing the warrant will face a significant risk of violence or destruction of evidence.

Similarly, in *Ybarra*, the Court held that a warrant to search a drug tavern and its bartender for narcotics did not authorize the officers executing the warrant to frisk a tavern patron absent reasonable suspicion to believe the patron was armed and dangerous: "The 'narrow scope' of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be

Petitioner notes (Br. 28-31) that some unannounced entries have been undertaken when the occupants were not threats. The Fourth Amendment, however, does not (and cannot) require that officers always be correct. To satisfy the Fourth Amendment, "what is generally demanded of the many factual determinations that must regularly be made by agents of the government * * * is not that they always be correct, but that they always be reasonable." *Illinois* v. *Rodriguez*, 497 U.S. 177, 185-186 (1990); see also *Hill* v. *California*, 401 U.S. 797, 804 (1971) ("sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment"). A rule requiring the level of specificity of knowledge of danger supported by petitioner would come only at an unacceptably high price: exposing officers to the peril that comes when armed drug traffickers are given time to mount an attack.

Amici ACLU, et al., argue (Br. 4-9) that the historical record does not support the creation of blanket exceptions to the knock-and-announce principle. Whatever the merits of that position, however, the determination of whether the risks inherent in executing warrants in drug trafficking cases are sufficient to justify an unannounced entry must be made by reference to the methods and means employed by contemporary criminal suspects. In particular, the increased firepower of modern weapons, as well as the in-

---

frisked, even though that person happens to be on premises where an authorized narcotics search is taking place." 444 U.S. at 94. Given that the warrant here established probable cause to believe that petitioner was trafficking in drugs, the police in this case had every reason to believe that petitioner and any other occupants of the hotel room might be armed and dangerous.

Finally, in *Mincey*, the Court merely held that the police may not make a warrantless search of a murder suspect's home following his arrest absent exigent circumstances. That holding sheds no light on the instant case.

creased risks such weapons pose in the hands of drug traffickers, must be taken into account in determining what is reasonable under the Fourth Amendment. Cf. *Tennessee* v. *Garner*, 471 U.S. 1, 14 (1985) (taking into account in Fourth Amendment analysis changes since the time of development of common law rules, "when weapons were rudimentary" and when "[d]eadly force could be inflicted almost solely in a hand-to-hand struggle"). This Court "has not simply frozen into constitutional law those law enforcement practices that existed at the time of the Fourth Amendment's passage." *Payton* v. *New York*, 445 U.S. 573, 591 n.33 (1980). As this Court has observed: "Crime has changed, as have the means of law enforcement, and it would therefore be naive to assume that those actions a constable could take in an English or American village three centuries ago should necessarily govern what we, as a society, now regard as proper." *Steagald* v. *United States*, 451 U.S. 204, 217 n.10 (1981).

F. The Entry In This Case Complied With The Fourth Amendment

The officers in this case acted reasonably. Because the police officers were executing a search warrant for narcotics, it was reasonable for them to fear a significant risk of danger and destruction of evidence if they gave prior notice before entering petitioner's motel room. There is no basis on this record to challenge the police officers' reasonable belief in the risks of danger or destruction of evidence if petitioner or the other occupants of his motel room were given advance notice of the raid. Accordingly, the police were justified in entering without a prior announcement.[17]

---

[17] This case does not present the question of the scope of any exclusionary rule remedy for an unlawful entry to execute a valid warrant. Although this Court has applied the exclusionary rule without comment in cases governed by the statutory command of Section

CONCLUSION

The judgment of the Wisconsin Supreme Court should be affirmed.

Respectfully submitted.

WALTER DELLINGER
Acting Solicitor General
MARK M RICHARD
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
JAMES A. FELDMAN
Assistant to the Solicitor General
DEBORAH WATSON
Attorney

MARCH 1997

3109, see *Miller*, 357 U.S. at 313-314; *Sabbath*, 391 U.S. at 586, the Court has never addressed that issue under the Fourth Amendment. See *Wilson*, 115 S. Ct. at 1919 n.4 (declining to reach the issue). In a variety of Fourth Amendment settings, however, this Court has recognized that the exclusionary rule does not require suppression of evidence that has been or would have been acquired by a lawful source independent of a Fourth Amendment violation. See, *e.g.*, *New York* v. *Harris*, 495 U.S. 14, 18-19 (1990); *Murray* v. *United States*, 487 U.S. 533, 537 (1988); *Segura*, 468 U.S. at 813-816; *Nix* v. *Williams*, 467 U.S. 431, 443 (1984). Under that analysis, the exclusionary rule would not mandate suppression in this case, since the drugs and other evidence found in petitioner's motel room were the fruits of a search conducted pursuant to a valid warrant. Even if the mode of entry into the room were illegal, any failure to knock and announce did not produce the discovery of the evidence.